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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

RICK FABELA DE LA CRUZ,

Plaintiff,

v.

INTERNAL REVENUE SERVICE, FRESNO  
OFFICE,

Defendant.

Case No.

**NOTICE OF REMOVAL**

(Super. Ct. Cty. Tulare  
Case No. PCU314407)

Pursuant to 28 U.S.C. §§ 1441, 1442, and 1446, the United States of America, on behalf of its bureau, the Internal Revenue Service, hereby removes this matter to the United States District Court for the Eastern District of California. The grounds for removal are as follows:

1. On October 24, 2024, Plaintiff Rick De La Cruz initiated this action in the Superior Court of the State of California, County of Tulare as case number PCU314407. A copy of each of the state court documents currently in possession of the United States, including the complaint, is attached as Exhibit 1. These are the only filings that have occurred to date in the state court matter.

2. Plaintiff alleges that he was wrongfully charged additional federal tax due to identity theft and he has “not been refunded the monies paid to date by the IRS.” *See* Exhibit 1, Declaration of Petitioner at 2. Plaintiff also claims business tort, unfair business practice and professional negligence. Plaintiff seeks monetary damages totaling \$71,037.00, which includes \$50,000 in damages, \$8,215.98 paid to the IRS, costs incurred in the amount of \$1,784.00, and interest in the amount of \$11,037.00 (calculated at the rate of 2.83 percent per year from April 15, 2018). *See* Exhibit 1.

3. This action may be removed to federal district court pursuant to 28 U.S.C. § 1442(a)(1) because it is an action involving claims related to collection of revenue, which must be resolved pursuant to federal law. 28 U.S.C. § 1331.

4. This action may also be removed under 28 U.S.C. § 1441 because it is a civil action brought in State court against the United States related to federal taxes, and the district courts of the United States “have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue.” 28 U.S.C. § 1340.

5. According to the “Proof of Service of Summons,” the initial filings in this case were personally delivered to “Front Desk Staff” of the “Internal Revenue Service” at 5300 West Tulare Ave, Visalia, CA 93277 on November 8, 2024. Exhibit 1. The United States does not concede this constituted proper service of process triggering the removal period under 28 U.S.C. § 1446(b)(1). This provision specifies that the removal notice for a civil action “shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the [complaint].” 28 U.S.C. § 1446(b)(1). However, receipt of a complaint by the defendant only triggers 28 U.S.C. § 1446(b)'s removal period if proper service has been effected when the complaint is received. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999).

6. Federal Rule of Civil Procedure 4(i) governs service upon the United States and its Agencies. To properly serve the United States pursuant to Rule 4(i), a party is required to “deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought . . . or send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney’s office” and “send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, DC.” Fed. R. Civ. P. 4. Neither the United States Attorney for the Eastern District of California, nor the Attorney General of the United States received the required documents in this case. The removal period has therefore not been triggered and removal is timely.

7. A copy of this notice of removal shall be promptly filed with the Clerk of the Superior Court of the State of California, Tulare County, and written notice shall be provided to all known parties. *See* 28 U.S.C. § 1446(d).

8. By filing this notice, the United States does not waive any defenses available under Federal Rule of Civil Procedure 12.

WHEREFORE, notice is given that the above-captioned action now pending in the Superior Court of the State of California, Tulare County, case number PCU314407, has been removed to this Honorable Court.

Respectfully submitted February 21, 2025

/s/ Halsey Diakow  
HALSEY DIAKOW  
Trial Attorney, Tax Division  
U.S. Department of Justice  
*Counsel for the United States of America*

**CERTIFICATE OF SERVICE**

I certify that on February 21, 2025, I electronically filed the forgoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties who have appeared in this matter and are eligible to receive CM/ECF notices.

I certify that on February 21, 2025, I mailed a copy of the foregoing via FedEx to the following non-CM/ECF party at the following address:

Rick Fabela De La Cruz  
1630 West Grand Ave  
Porterville, CA 93257

DATED: February 21, 2025

/s/ Halsey Diakow  
HALSEY DIAKOW  
Trial Attorney, Tax Division  
U.S. Department of Justice